



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

February 14, 1997

Mr. Kevin D. Pagan  
Assistant City Attorney  
City of McAllen  
P.O. Box 220  
McAllen, Texas 78505-0220

OR97-0350

Dear Mr. Pagan:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. We assigned your request ID# 103721.

The City of McAllen (the "city") received a request for incident reports for several referenced dates and locations. The requestor also asked for all reports and information concerning a specific named individual. Your letter indicates that you have released the front page offense report information as to the referenced incidents. You assert that the remaining information at issue is excepted from disclosure pursuant to section 552.108 of the Government Code.

We note initially that one of the documents submitted to this office is an automobile accident report form completed in accordance with chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (officer's accident report). The Seventy Fourth Legislature, without reference to the repeal and codification of V.T.C.S. article 6701d,<sup>1</sup> amended section 47 of article 6701d, V.T.C.S., relating to the disclosure of accident reports. Act of May 27, 1995, 74th Leg., R.S., ch. 894, §1, 1995 Tex. Sess. Law Serv. 4413, 4414. As amended, section 47(b)(1) provides that:

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<sup>1</sup>Effective September 1, 1995, article 6701d was repealed and codified as part of the Transportation Code. Act of May 1, 1995, 74th Leg., R.S., ch. 165, § 24, 1995 Tex. Sess. Law Serv. 1025, 1870-71. *See* Trans. Code § 550.065 (release of accident reports). The legislature did not intend a substantive change of the law but merely a recodification of existing law. *Id.* § 25, 1995 Tex. Sess. Law Serv. at 1871. The repeal of a statute by a code does not affect an amendment of the statute by the same legislature which enacted the code and the amendment is preserved and given effect as part of the code provision. Gov't Code § 311.031(c). Thus, the amendment of section 47 of article 6701d, V.T.C.S., in House Bill 391, remains in effect as current law and may be found following section 550.065 of the Transportation Code. *See also* Act of May 27, 1995, 74th Leg., R.S., ch. 894, §1, 1995 Tex. Sess. Law Serv. 4413, 4414.

The Department or a law enforcement agency employing a peace officer who made an accident report *is required to release a copy of the report* on request to:

....

(D) a person who provides the Department or the law enforcement agency with two or more of the following:

- (i) the date of the accident;
- (ii) the name of any person involved in the accident; or
- (iii) the specific location of the accident

*Id.* (emphasis added). Under this provision, the city "is required to release" a copy of an accident report to a person who provides the city with two or more pieces of information specified by the statute. *Id.* Because the requestor has not supplied the required information to the city, the accident report form may not be released to the requestor. We now address your section 552.108 argument against disclosing the requested information.

Section 552.108 excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime" and "[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution." Gov't Code § 552.108; *see Holmes v. Morales*, 924 S.W.2d 920 (Tex. 1996). However, information that is found on the front page of an offense report is generally considered to be public information. *See generally Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), writ ref'd n.r.e., per curiam, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976). As to the incident reports for which the requestor provided specific dates, addresses and, in some cases, incident numbers, we agree that all but the front page offense report information is protected from disclosure pursuant to section 552.108. As you have already released the front page offense report information for these particular reports, you may withhold the remaining information.

The requestor also asked for all reports concerning a named individual. The request for all records of a named individual is a request for criminal history information. Criminal history information may be withheld from required public disclosure under common-law privacy if it meets the criteria articulated for section 552.101 of the Government Code by the Texas Supreme Court in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). *See also* Gov't Code 411.084 (prohibiting release of criminal history information obtained from Department of

Public Safety). Under the *Industrial Foundation* case, information may be withheld on common-law privacy grounds only if it is highly intimate or embarrassing and is of no legitimate concern to the public.

The privacy interest in criminal history record information has been recognized by federal regulations which limit access to criminal history record information that states obtain from the federal government or other states. See 28 C.F.R. § 20; see also *United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989) (finding criminal history information protected from disclosure under Freedom of Information Act, 5 U.S.C. § 552, and the Privacy Act of 1974 ("Privacy Act"), 5 U.S.C. § 552a). Recognition of this privacy interest has been echoed in open records decisions issued by this office. See Open Records Decision Nos. 616 (1993), 565 (1990), 216 (1978), 183 (1978), 144 (1976), 127 (1976).<sup>2</sup>

In *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), writ *ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976), the court addressed the availability under the Open Records Act of certain broad categories of documents in the possession of a city police department, including offense "Personal History and Arrest Records." The court held that "Personal History and Arrest Records" were excepted from required public disclosure. These records primarily contained criminal histories, such as information regarding previous arrests and other data relating to suspected crimes, including the offenses, times of arrest, booking numbers, locations, and arresting officers. *Houston Chronicle Publishing Co.*, 531 S.W.2d at 179. The court held that release of these documents would constitute an unwarranted invasion of an arrestee's privacy interests. *Id.* at 188.

As the requestor seeks all reports concerning a named individual, release of this information provides the named individual's criminal history information. As noted above, federal and state case law regarding an individual's common-law right to privacy expressly prohibits the release of such information. Thus, the remaining records responsive to this portion of the request must be withheld in their entirety from disclosure pursuant to section 552.101 of the Government Code.<sup>3</sup>

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue

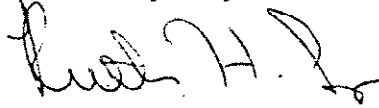
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<sup>2</sup> The Code of Federal Regulations defines "criminal history information" as "information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, detentions, indictments, informations, or other formal criminal charges, and any disposition arising therefrom, sentencing, correctional supervision, and release." 28 C.F.R. § 20.3(b). The information at issue here fits this description.

<sup>3</sup> We note that because the requestor asked for specific reports, it was appropriate to release the front page offense information of the specific incident reports requested, even if the reports concerned the named individual.

under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy  
Assistant Attorney General  
Open Records Division

RHS/ch

Enclosures: Submitted documents

Ref.: ID# 103721

cc: Mr. Calixtro Villareal, Jr.  
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(w/o enclosures)